

STATEMENT OF FREDERICO JUARBE JR.
ASSISTANT SECRETARY FOR VETERANS' EMPLOYMENT AND TRAINING
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON BENEFITS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

July 24, 2003

Chairman Brown, Ranking Member Michaud, and other distinguished members of the House Veterans' Affairs Committee, Subcommittee on Benefits, the Department of Labor is pleased to have this opportunity to provide comments on the Uniformed Services Employment and Reemployment Rights Act (USERRA). As you know, USERRA has been very much in the news for nearly two years now. Within days after the attacks of September 11, 2001, the President authorized a partial mobilization, under which up to a million members of the Ready Reserve can be activated for up to 24 months. As of this week, 200,000 of these citizen-soldiers remain on active duty.

USERRA is particularly important now as it provides reemployment rights to those men and women called from civilian jobs to serve in the nation's defense. In addition, the law prohibits employer discrimination against veterans and reservists because of their military service or obligations.

HISTORY

USERRA's roots go back to 1940, when the Congress was considering the nation's first peacetime draft. At the same time, the lawmakers resolved to provide newly inducted servicemembers right to return to their pre-service employers. To achieve this, what came to be popularly known as the Veterans' Reemployment Rights (VRR) law was enacted.

By the early 1990s, the VRR law had become a complex and often difficult patchwork of legislative amendments and court decisions. It was severely tested by the mobilization and subsequent return of some 265,000 Guard and Reserve members for Operation Desert Shield/Desert Storm in 1991. USERRA revised and restructured the VRR law, continuing most of its provisions while clarifying many provisions. It also made some substantive changes.

The legislative history makes it clear that, to the extent it is consistent with USERRA, pre-USERRA case law developed under the VRR remains useful in interpreting the statute. For example, in fulfilling our obligations to administer and help enforce USERRA, we are ever mindful of the two principles laid down by the Supreme Court in its first reemployment rights case, *Fishgold v. Sullivan Drydock*. Those principles are as valid today as they were in 1946 – first, that the law is to be construed liberally to the benefit of those it protects; and second, that upon completion of service, the returning servicemember is to be reemployed in the position he or she would have occupied had employment continued during the period of service – the “escalator principle.”

USERRA is experiencing its greatest test due to the current war in Iraq, as well as Operations Noble Eagle and Enduring Freedom. The Department of Labor believes that USERRA has worked extremely well in the face of its current challenges. I would like to turn now to our USERRA experiences and activities since September 11, 2001.

CURRENT DATA

Since USERRA was enacted in October 1994, the Office of Veterans' Employment and Training (VETS) has reported periodically to this Committee on our activities related to the administration and enforcement of the statute. For Fiscal Years 1995 through 2001, which ended September 30, 2001, we reported a steady decline in the number of USERRA cases opened year-by-year. We opened nearly 1,400 cases in FY 1995, but by FY 2001 the number had declined to 895. In the wake of the mobilization that began in September 2001, this trend has reversed.

I should say here that while we have experienced an increase in cases opened, it is not proportional to the enormous number of men and women who have been called to duty. The nation's employer community is overwhelmingly supportive of their employees who have been activated under the ongoing mobilization.

During FY 2002, we opened 1,195 new USERRA cases, an increase of less than 35 percent over the previous fiscal year. As of June 30, 2003, the end of the third quarter, we had opened 953 new cases for FY 2003. If this rate continues through the end of this fiscal year, we will experience a slight increase, about 6 percent, over FY 2002.

I can report with pride that the VETS' staff has been up to the challenge of dealing with the increased USERRA caseload. Despite the sharp increase of USERRA claims filed, our case handling statistics this year are consistent with prior years. As of June 30, we have closed 911 cases during FY 2003. We closed 89% of these cases within 90 days after opening and 95% within 120 days. Of the cases closed, one-third of the claims filed were found to be without merit or the claimants were found to be not eligible for USERRA protection, and about another twenty five percent were closed because the claimant withdrew or did not pursue the complaint. One-third of the claims were successfully resolved in favor of the claimant, either because the claim was granted, or a mutually agreeable settlement was achieved. About seven percent of cases closed were referred for further legal action. Of those cases, about nine in ten are referred to the Department of Justice because they involve a non-Federal employer, and the remainder are referred to the Office of Special Counsel because they involve Federal executive agencies.

COMPLIANCE ASSISTANCE EFFORTS

While our staff has been extremely effective at resolving complaints, a major focus for the Department remains the resolution of problems before complaints arise. Secretary of Labor Chao has made compliance assistance a priority with respect to all the laws administered and enforced by the Department, including USERRA. In this regard, VETS represents the Secretary in providing assistance and conducting educational outreach activities.

Since September 2001, VETS' staff nationwide has responded to more than 15,000 requests for USERRA information from employers, Reserve component members, the media and the

general public. In addition, we have delivered USERRA briefings and presentations to more than 91,000 people nationwide. Most of these briefings were for members of mobilized Guard and Reserve units, but we have also reached many employers and employer groups. Just a few examples – Web casts for the U.S. Chamber of Commerce, the Society for Human Resource Management, the Labor Policy Association and others; an appearance as a featured guest on the national FEDtalk radio broadcast; an appearance on a television broadcast to all the offices of the United States Attorneys and a nationwide network of National Guard units; and an interactive conference call with employer members of the Equal Employment Advisory Council.

In fulfilling our statutory obligations to provide help and educational outreach, we have received tremendous support and assistance from colleagues both inside and outside the Department of Labor. The Department's Office of the Solicitor has provided support in all areas, particularly by participating in briefings and helping us respond to technical questions. They are also helping to draft new USERRA regulations, which we are considering promulgating.

Additionally, we have received numerous briefings and invaluable technical assistance support from the Employee Benefits Security Administration. The Employment Standards Administration has helped us develop interpretations of the relationships between USERRA and other laws, such as the Family and Medical Leave Act and the Fair Labor Standards Act. Our web site's resource guide for the general public was revised in March 2003 to update and clarify VETS position on pension issues. And, VETS participates in DOL's

Internet based Employment Laws Assistance for Workers and Small Businesses advisor program (“elaws”), whereby the Department provides interactive advisors for USERRA and other laws. The e-VETS Resource Advisor, a portal site to numerous websites with information and resources helpful to veterans, has been released and is available through the VETS homepage as well as through the “elaws” Advisor on the DOL website.

Outside of the Department, I would like to mention the extraordinary efforts by our colleagues at the National Committee for Employer Support of the Guard and Reserve (ESGR). Their small national staff and more than 4,000 volunteers nationwide perform prodigious service in promoting understanding between employers and their reservist-employees and in helping to informally resolve disputes when they arise. We would be hard pressed to do what we do without ESGR, represented here today by Colonel Al Smith. Other agencies that have provided assistance to us include the Department of Justice, Office of Special Counsel and the Office of Personnel Management, and many others.

CONCLUSION

The Department of Labor will continue to inform employers about USERRA and VETS will continue with its mission of protecting the reemployment rights of our servicemembers. Mr. Chairman and members of the Committee, this concludes my statement. I will be happy to answer any questions.